



County of San Bernardino

F A S

CONTRACT TRANSMITTAL

FOR COUNTY USE ONLY

<input checked="" type="checkbox"/> New <input type="checkbox"/> Change <input type="checkbox"/> Cancel	Vendor Code WESTEND678		SC	Dent. A	Contract Number	
County Department Economic and Community Development			Dept. ECD	Orgn. PROJ	Contractor's License No.	
County Department Contract Representative THOMAS R. LAURIN/ Michele Kim			Telephone (909) 388-0808		Total Contract Amount \$81,108	
Contract Type <input type="checkbox"/> Revenue <input type="checkbox"/> Encumbered <input checked="" type="checkbox"/> Unencumbered <input type="checkbox"/> Other:						
If not encumbered or revenue contract type, provide reason: <u>A&E Project</u>						
Commodity Code		Contract Start Date 05/04/04	Contract End Date 05/04/14	Original Amount \$81,108	Amendment Amount	
Fund AAA	Dept. ECD	Organization ECD	Appr. 200	Obj/Rev Source 5030	GRC/PROJ/JOB No. 00002383	Amount \$81.108
Project Name Fourth District: Parking Lot Re-paving - Ontario Montclair YMCA. #340-28108/2383 Contract Type (2g)			Estimated Payment Total by Fiscal Year			
			FY	Amount	I/D	
				A&E Project		

CONTRACTOR West End YMCA

Federal ID No. or Social Security No. 95-1727678

Contractor's Representative Larry Enriquez, Executive Director, Ontario-Montclair YMCA (branch of West End YMCA)

Address 215 W. "C" Street, Ontario, CA 91762 Phone (909) 986-5847

Nature of Contract:

This contract, between the County of San Bernardino and the West End YMCA, provides eighty one thousand one hundred and eight dollars (\$81,108) in Community Development Block Grant (CDBG) funds for parking lot rehabilitation improvements at the West End YMCA's Ontario-Montclair site, located at 215 West "C" Street in Ontario, CA. The improvements include repaving the existing 23,000 square foot parking lot, installation of (4) parking lot lighting fixtures, landscaping, and installation of an additional junction box and conduit necessary to replace and relocate the agency's existing sign. The City of Ontario has provided a total of \$68,000 in matching funds in the 2002-03 and 2003-04 Program Years.

Maintenance and operation of the facility will be provided by the West End YMCA at their sole expense for no less than ten (10) years following the completion of the improvements. Construction management services for the project will be provided by the County. The West End YMCA's Ontario-Montclair branch provides social, educational, and recreational programs to children, teens and adults living in Montclair, Ontario, Upland, and surrounding communities of the Fourth Supervisorial District.

The Contract shall commence on the date following completion of the improvements and shall remain in effect for a period of no less than ten (10) years.

The attached contract consists of 8 pages.

Approved as to Legal Form (sign in blue ink)	Reviewed as to Contract Compliance	Presented to BOS for Signature
 County Counsel	 	 Department Head
Date _____	Date _____	Date _____

Auditor/Controller-Recorder Use
Only

☐ Contract Database ☐ FAS

Input Date	Keyed By
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SAN BERNARDINO COUNTY
DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT
MAINTENANCE AND OPERATION CONTRACT
WITH WEST END YMCA

This Contract is made and entered into by and between San Bernardino County, hereinafter referred to as "COUNTY", and WEST END YMCA, hereinafter referred to as "YMCA".

WHEREAS, COUNTY has entered into a Contract with the United States of America through its Department of Housing and Urban Development (HUD) to execute COUNTY Community Development Block Grant (CDBG) Program under the Housing and Community Development Act of 1974, as amended, hereinafter referred to as the "ACT"; and,

WHEREAS, COUNTY Department of Economic and Community Development hereinafter referred to as "ECD", is authorized to act on behalf of COUNTY in administering COUNTY CDBG program; and,

WHEREAS, COUNTY and YMCA recognize the public benefit in providing social, educational, and recreational programs to children, teens and adults living in Montclair, Ontario, Upland, and surrounding communities of the Fourth Supervisorial District; and,

WHEREAS, YMCA currently owns, maintains and operates a facility located at 215 West "C" Street, Ontario, CA at the sole expense of YMCA; and,

WHEREAS, COUNTY Board of Supervisors has approved CDBG funding in the amount of eighty one thousand one hundred eight dollars (\$81,108) for the construction of rehabilitation improvements to the YMCA's Ontario-Montclair facility parking lot and the City of Ontario has provided \$68,000 in matching CDBG funds for this project; and,

WHEREAS, YMCA's Ontario-Montclair facility is located in the City of Ontario's "Center City" Redevelopment Project Area, and the said improvements will address the physical and social conditions that lead to area blight; and,

WHEREAS, COUNTY and YMCA desire to have COUNTY manage and direct the construction of the rehabilitation improvements.

NOW, THEREFORE, in consideration of the mutual covenants herein set forth and the mutual benefits to be derived therefrom, the parties agree as follows:

1. PURPOSE OF CONTRACT

This Contract is made for the purpose of providing financial assistance and identifying the parties responsible for the construction, maintenance and operation of the parking lot improvements to the YMCA's Ontario-Montclair facility, located at 215 West "C" Street, Ontario, CA, hereinafter referred to as "FACILITY".

2. SCOPE OF PROJECT

COUNTY shall manage and direct the construction of improvements, hereinafter referred to as "IMPROVEMENTS", to include repaving the existing 23,000 square foot parking lot, installation of (4) parking lot lighting fixtures, landscaping, and installation of an additional junction box and conduit necessary to replace and relocate the YMCA's existing sign.

Additional improvements may be included only after written Contract between YMCA and COUNTY. The actual scope of IMPROVEMENTS may not include all items identified herein, but shall be limited to the amount of CDBG funding identified in Section 4, FUNDING.

YMCA shall maintain and operate FACILITY for the operation of social, educational, and recreational programs to children, teens and adults in Montclair, Ontario, Upland, and the surrounding communities of the Fourth Supervisorial District for the period as identified in Section 6, MAINTENANCE AND OPERATION. Unless as specified otherwise, ECD shall have the authority to represent COUNTY regarding the terms and conditions of this Contract and the administration thereof.

3. TIME OF PERFORMANCE

YMCA shall comply with the terms of this contract for no less than ten (10) years from the date following completion of the improvements. The contract term is for ten (10) years as specified in Section 6, MAINTENANCE AND OPERATION. In addition to the ten (10) year term, YMCA is required to uphold the terms of the contract for an additional five (5) years after expiration of this Contract as specified in Section 21, REVERSION OF ASSETS.

4. FUNDING

COUNTY shall provide CDBG funds in an amount not to exceed eighty one thousand one hundred eight dollars (\$81,108) for the purpose of constructing IMPROVEMENTS to FACILITY. Any costs to construct IMPROVEMENTS to FACILITY in excess of the amounts available in this section shall be the sole responsibility of YMCA. This condition however, does not preclude COUNTY from providing additional funding at its sole discretion.

5. CONSTRUCTION MANAGEMENT

COUNTY and YMCA agree COUNTY shall provide construction management services necessary for the timely and successful completion of IMPROVEMENTS. Construction management services shall be included as part of IMPROVEMENTS.

6. MAINTENANCE AND OPERATION

YMCA shall have sole responsibility for the maintenance and operation of FACILITY at the sole expense of YMCA for a period of not less than ten (10) years beginning upon the date of completion of IMPROVEMENTS. FACILITY shall be maintained and operated at all times for the purpose of social, educational, and recreational programs as identified in Section 2, SCOPE OF PROJECT, and in accordance with federal, state and local laws, regulations and safety standards. In addition, YMCA is required to continue the use of the property for five (5) years after the period of time established in Section 3. TIME OF PERFORMANCE, as provided in Section 21, REVERSION OF ASSETS. YMCA shall be responsible for completing and submitting to COUNTY the Public Facility Certification form. This form will be provided by ECD.

7. ON-SITE INSPECTION

COUNTY, its officers, agents, employees, persons under Contract with COUNTY and representatives of HUD, will have the privilege and right to on-site inspection of the FACILITY for the duration of this Contract. YMCA will ensure that its employees or agents furnish any information, that in the judgement of COUNTY and HUD representatives, may be relevant to a question of compliance with contractual conditions, HUD directives, or the effectiveness, legality, and achievements of the program.

8. CONTRACT COMPLIANCE

YMCA will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms (a firm located in an area of high unemployment) are used when possible in compliance with provisions of Title 24 Code of Federal Regulations Part 85.36(e).

YMCA shall comply with Executive Orders 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107, (Equal Employment Opportunity), Executive Orders 11625, 12138, 12432, 12250, and Executive Order 13279 (Equal Protection of the Laws for Faith-Based and Community Organizations), Title VII of the Civil Rights Act of 1964, the California Fair Housing and Employment Act, County Policy 15-01, and other applicable federal, state and COUNTY laws, regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

YMCA shall make every effort to ensure that all projects funded wholly or in part by CDBG Program funds shall provide equal employment and career advancement opportunities for minorities and women. In addition, YMCA shall make every effort to employ residents of the area and shall keep a report of YMCA staff positions that have been created directly as a result of this program.

9. COMPLIANCE WITH LAWS

All parties agree to be bound by applicable federal, state and local laws, ordinances, regulations and directives as they pertain to the performance of this Contract. This Contract is subject to and incorporates the terms of the ACT; 24 Code of Federal Regulations, Part 570, Chapter V and; U.S. Office of Management and Budget Circular A-87.

10. INDEMNIFICATION

YMCA agrees to indemnify, defend and hold harmless COUNTY and its respective authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors or omissions and for any costs or expenses incurred by COUNTY on account of any claim therefore, except where such indemnification is prohibited by law.

YMCA shall indemnify and hold harmless COUNTY and its respective authorized officers, employees, agents and volunteers from any liability, claims, losses, demands, and actions incurred by COUNTY as a result of the determination by HUD or its successor that activities under taken by each of YMCA under the program(s) fail to comply with any laws, regulations or policies applicable thereto or that any funds billed by and disbursed to YMCA under this Contract were improperly expended.

11. INSURANCE REQUIREMENTS

Without, in any way affecting the indemnity herein provided and in addition thereto, YMCA shall secure and maintain throughout the Contract the following types of insurance with limits as shown:

- Workers' Compensation - A program of Workers' Compensation insurance or a State-approved Self Insurance Program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employers' Liability with \$250,000 limits, covering all persons providing services on behalf of YMCA and all risks to such persons under this Contract.

If YMCA has no employees, it may certify or warrant to County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Risk Manager.

With respect to contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation Insurance. If the County's Risk Manager determines that there is no reasonably priced coverage for volunteers, evidence of participation in a volunteer insurance program may be substituted.

- Comprehensive General and Automobile Liability Insurance - This coverage to include contractual coverage and automobile liability coverage for owned, hired, and non-owned vehicles. The policy shall have combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000).
- Errors and Omissions Liability Insurance - Combined single limits of \$1,000,000 for bodily injury and property damage and \$ 3,000,000 in the aggregate or

Professional Liability - Professional Liability Insurance with limits of at least \$1,000,000 per claim or occurrence.
- Additional Named Insured - All policies, except for Workers' Compensation, Errors and Omissions and Professional Liability policies, shall contain additional endorsements naming COUNTY and its officers, employees, agents, and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder.
- Waiver of Subrogation Rights - Except for Errors and Omissions and Professional Liability, YMCA shall require the carriers of the above required coverage to waive all rights of subrogation against COUNTY, its officers, employees, agents, volunteers, contractors and subcontractors.
- Policies Primary and Non-Contributory - All policies required above are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by COUNTY.
- Proof of Coverage - YMCA shall immediately furnish certificates of insurance to ECD evidencing the insurance coverage, including endorsements, above required prior to the commencement of performance of services hereunder, which shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to ECD, and YMCA shall maintain such insurance from the time YMCA commences performance of services hereunder until the completion of such services. Within sixty (60) days of the commencement of this Contract, YMCA shall furnish certified copies of the policies and all endorsements. YMCA shall complete and submit Contract Exhibit 1 of 1, Insurance Inventory, along with the above required insurance documents.

12. INSURANCE REVIEW

The above insurance requirements are subject to periodic review by COUNTY. The County's Risk Manager is authorized, but not required, to reduce or waive any of the above insurance requirements whenever the Risk Manager determines that any of the above insurance is not available, is unreasonably priced, or is not needed to protect the interests of COUNTY. In addition, if the Risk Manager determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Risk Manager is authorized, but not required, to change the above insurance requirements, to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against COUNTY, inflation, or any other item reasonably related to the COUNTY's risk.

Any such reduction or waiver for the entire term of the Contract and any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Contract. YMCA agrees to execute any such amendment within thirty (30) days of receipt.

13. ADDITIONAL INSURANCE REQUIREMENTS

YMCA shall, at its sole expense, obtain and deliver to COUNTY for its approval, certification(s) or policy(s) of standard fire insurance with extended coverage and vandalism and malicious mischief endorsements for the full replacement value of FACILITY. In the event of any damage or destruction to FACILITY covered by the insurance, YMCA shall use the entire insurance proceeds to restore FACILITY. The insurance required under this section shall be maintained by YMCA at its sole expense for the term of this Contract. Said insurance shall contain endorsements providing that the insurance company issuing the insurance will not cancel or reduce the insurance coverage without thirty (30) days prior written notice to COUNTY. YMCA shall inform COUNTY in writing of any change, expiration or renewal of said insurance within thirty (30) days of the effective date of change.

14. RELIGIOUS PROSELYTIZING OR POLITICAL ACTIVITIES

YMCA agrees that it will not engage in inherently religious activities, such as worship, religious instruction or proselytization, as part of the activities funded under this Contract. Further, YMCA agrees that it will not perform or permit political activities in connection with the performance of this Contract. Funds made available under this Contract will be used exclusively for performance of the work required under this Contract and no funds made available under this Contract shall be used to promote any religious or political activities.

If the YMCA conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this Contract, and participation must be voluntary for the beneficiaries of the CDBG-funded program services.

FACILITY, however, may be used on an incidental basis to hold political meetings, candidate forums, or voter registration campaigns, provided that all parties and organizations have access to the facility on an equal basis, and are assessed equal rent or use charges, if any.

15. DISCRIMINATION

No person shall, on the grounds of race, sex, creed, color, religion, or national origin, be excluded from participating in, be refused the benefits of, or otherwise be subjected to discrimination in any activities, programs, or employment by YMCA.

16. ASSIGNMENT AND SUBLETTING

YMCA shall not assign, subordinate, or use for financing, this Contract or any interest therein, unless COUNTY has previously given its written consent. Provided, however, that any approved assignment shall be subject to all the terms, covenants, and conditions of the Contract. If YMCA attempts to effect any unauthorized assignment, or transfer occurs by operation of law, or this Contract or any interest therein is subjected to garnishment or sale under any execution of any suit or proceeding brought against or by YMCA, or if YMCA is adjudged bankrupt or insolvent by any court or upon YMCA making an assignment for the benefit of creditors, COUNTY may, at its option, forthwith terminate this Contract upon written notice thereof to YMCA, and thereupon, no one but COUNTY shall have any further rights hereunder.

17. HYPOTHECATION OF REAL PROPERTY

During the term of this Contract, neither YMCA, nor its successors, shall cause to be placed or permit to be placed any encumbrance or lien on the real property covered under this Contract, or shall sell, transfer, mortgage or hypothecate FACILITY without the written authorization of COUNTY. Notwithstanding Section 18, VIOLATION OF CONTRACT, and any other provisions herein, YMCA shall reimburse COUNTY for the fair market value of FACILITY less any portion thereof attributable to expenditures of non-CDBG funds

for FACILITY, should YMCA sell, hypothecate, mortgage or encumber FACILITY without the written authorization of COUNTY during the term of this Contract.

18. VIOLATION OF CONTRACT

In the event that YMCA violates any of the terms and conditions of this Contract, COUNTY shall give written notice of violation and demand for correction. If, within thirty (30) days from receipt of written notice, YMCA has not corrected the violation or shown acceptable cause, COUNTY has the right to terminate this Contract. It is agreed that in the event of a termination due to a violation of this Contract by YMCA, YMCA shall pay to COUNTY within ten (10) days of receipt of Notice of Termination, the sum of eighty one thousand one hundred eight dollars (\$81,108). Said sum is agreed to represent a reasonable endeavor by both parties hereto, to be a fair compensation for the foreseeable losses that might result from such a breach or default. Penalties and damages covered under separate Contracts with COUNTY for installation of handicapped-accessible improvements shall be in addition to that contained herein. Such termination shall not excuse YMCA from reimbursement provisions in Section 17, HYPOTHECATION OF REAL PROPERTY.

19. PROGRAM REPORTING AND RETENTION OF RECORDS

YMCA agrees to prepare and submit financial, program progress, and other reports as required by HUD or COUNTY directives. YMCA shall maintain such program, property, personnel, financial, statistical and other records, supporting documents, and accounts as are considered necessary by HUD or COUNTY to assure proper accounting for all Contract funds. Said records, documents and accounts are to be retained by YMCA for a minimum of five (5) years. All YMCA records, with the exception of confidential client information, shall be made available to representatives of COUNTY and the appropriate federal agencies. YMCA is required to submit data necessary to complete the Annual Grantee Performance Report in accordance with HUD regulations in the format and at the time designated by the ECD Director or his designee.

20. TERMINATION BY COUNTY

Notwithstanding Section 18, VIOLATION OF CONTRACT, COUNTY may immediately terminate this Contract upon the termination, suspension, discontinuation or substantial reduction in CDBG funding of the Contract activity or the reprogramming of said funds as deemed necessary by COUNTY, or for the convenience of COUNTY.

21. REVERSION OF ASSETS

All real property acquired or improved in whole or in part with CDBG funds in excess of \$25,000 under this Contract must continue in the use that provides the service benefits and national objectives for which it was funded until five years after expiration of this Contract as set forth in 24 CFR 570.503, or such longer period of time as determined by COUNTY; or it must be disposed of in a manner resulting in a reimbursement to COUNTY in the amount of the current fair market value of the property less any portion thereof attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property.

22. AMENDMENTS: VARIATIONS

This writing with attachments, embodies the whole of this Contract of the parties hereto. There are no oral Contracts contained herein. Except as herein provided, addition or variation of the terms of this Contract shall not be valid unless made in the form of a written amendment to this Contract formally approved and executed by the parties.

23. INVALID CONDITIONS

If any one or more of the terms, provisions, sections, promises, covenants or conditions of this Contract shall to any extent be judged invalid, unenforceable, void or voidable for any reason whatsoever, by a court of

competent jurisdiction, each and all of the remaining terms, provisions, sections, promises, covenants and conditions of the Contract shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

24. BINDING INTEREST

This Contract shall be binding on the parties, successors in interest, heirs and assigns.

25. NOTICES

All notices shall be served in writing. The notices shall be sent to the following addresses:

COUNTY

County of San Bernardino
Department of Economic and
Community Development
290 N. "D" St., Sixth Floor
San Bernardino, CA 92415-0040

WEST END YMCA

West End YMCA
Ontario-Montclair Branch
215 West "C" Street
Ontario, CA91762

26. EASEMENTS, TRUSTS AND WARRANTIES

- A. It is expressly understood and agreed that this Contract and all rights and privileges hereunder granted are subject to all easements and rights-of-way now existing in, to, under or over the said premises for any purpose whatsoever.
- B. In the event that this Contract or any provision thereof shall be declared null and void by a court of competent jurisdiction, COUNTY or any of their respective officers, agents or employees, or members of COUNTY Board of Supervisors shall not be liable to YMCA or to any person holding under or through him for any losses or damages of any nature whatsoever suffered or claimed to be suffered by YMCA or such person by reason of such determination.

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- C. YMCA assumes all risks incident to the use and management of said premises in its present condition or in any condition thereof which may prevail during the term of this Contract.
- D. Any major changes required by a competent government jurisdiction to the Contract which are beyond the control of YMCA will make the Contract terms subject to re-negotiation.
- E. It is expressly understood and agreed that COUNTY does not, in any way nor for any purpose, become a partner of YMCA, or a joint venturer with YMCA.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed as of the day and year first written above.

COUNTY OF SAN BERNARDINO

YMCA OF THE WEST END

By: _____
DENNIS HANSBERGER, Chairman
Board of Supervisors

By: _____
LARRY ENRIQUEZ, Executive Director
West End YMCA, Ontario-Montclair Branch

Date: _____

Date: _____

SIGNED AND CERTIFIED THAT A COPY OF
THIS DOCUMENT HAS BEEN DELIVERED TO
THE CHAIRMAN OF THE BOARD

J. RENEE BASTIAN
Clerk of the Board of Supervisors
of the County of San Bernardino

By: _____

Date: _____

APPROVED AS TO LEGAL FORM

RONALD D. REITZ
County Counsel

By: _____
MICHELLE D. BLAKEMORE
Deputy County Counsel

Date: _____

COUNTY OF SAN BERNARDINO DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT

Project/Activity Title: Fourth District: Parking Lot
Re-Paving - Ontario-Montclair YMCA

Case Number: 340-28108/2383

Name/Address of Contractor Agency:

West End YMCA
215 W. "C" Street
Ontario, CA 91762

Date of Issue:

X Original: Beginning

Amendment #

INSURANCE INVENTORY**WORKERS' COMPENSATION/EMPLOYERS' LIABILITY INSURANCE**

Name of Insurance Company

Effective Dates

Employer's Liability Limit \$

Certificate of Insurance Attached ☐ Yes ☐ No: On File w/ ECD

COMPREHENSIVE GENERAL AND AUTOMOBILE LIABILITY INSURANCE

Name of Contractor's General Insurance Company

Limits of Liability Effective Dates

Per Occurrence \$ Additional Insured Endorsement Attached ☐ Yes ☐ No: On File w/ ECD

Annual Aggregate \$ Certificate of Insurance Attached ☐ Yes ☐ No: On File w/ ECD

Name of Contractor's Automobile Liability Insurance Company

Limits of Liability Effective Dates

Per Person \$ Per Accident \$ Damage Liability \$ Combined Single Limit

ERRORS AND OMISSIONS LIABILITY INSURANCE

Name of Contractor's Insurance Company

Limits of Liability Effective Dates

Per Occurrence \$ Additional Insured Endorsement Attached ☐ Yes ☐ No: On File w/ ECD

Annual Aggregate \$ Certificate of Insurance Attached ☐ Yes ☐ No: On File w/ ECD

PROFESSIONAL LIABILITY INSURANCE

Name of Contractor's Insurance Company

Limits of Liability Effective Dates

Per Occurrence \$ Additional Insured Endorsement Attached ☐ Yes ☐ No: On File w/ ECD

Annual Aggregate \$_____ Certificate of Insurance Attached

_____ Yes _____ No: On File w/ ECD